

Senate Bill No. 729

Passed the Senate September 6, 2007

Secretary of the Senate

Passed the Assembly September 5, 2007

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2007, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 11604, 11703, and 11705 of, to add Section 4456.3 to, and to add Chapter 11 (commencing with Section 12200) to Division 5 of, the Vehicle Code, relating to vehicles, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 729, Padilla. Vehicles: dealers: consumer protection.

(1) Existing law imposes licensing and regulatory requirements on vehicle dealers. A violation of those requirements is a crime.

This bill would create the Consumer Motor Vehicle Recovery Corporation (“recovery corporation”), with a board of directors with certain powers and duties, in order to provide payments to consumers on eligible claims, including, but not limited to, a vehicle dealer or lessor-retailer’s failure to remit license or registration fees or failure to pay proceeds of a consignment sale, subject to certain requirements and limitations. On and after July 1, 2008, the Department of Motor Vehicles would be required to charge dealers or lessor-retailers a fee, as prescribed, for each vehicle sold by the dealers or lessor-retailers. Those fees less an amount that is equal to the department’s costs related to collecting and processing the fees, would be continuously appropriated to the department for quarterly payment to the recovery corporation in order to fund its operations and pay eligible consumer claims, thereby making an appropriation.

A violation of these requirements would be a crime. In addition, a violation of a requirement to submit certain applications under penalty of perjury would be a crime. Because this bill would create new crimes, the bill would create a state-mandated local program.

The Department of Motor Vehicles would, in addition, be authorized to refuse issuing a license to a dealer, lessor-retailer, and certain other entities if the department finds that the applicant failed to repay the full amount of a claim paid by the recovery corporation, plus interest at the rate of 10% per annum.

The operation of the recovery corporation would be subject to examination and review by the Attorney General and his or her representatives, who would have the authority to determine that

the recovery corporation has failed or ceased to operate, under specified circumstances. The bill would require that if the recovery corporation is dissolved or ceases to exist, or if the Attorney General or his or her representative determines, as prescribed, that the recovery corporation has failed or ceased to operate, all outstanding debts, obligations of the recovery corporation, and amounts due for services rendered would first be paid from the remaining assets, including the recovery fund. The assets remaining, after settling those liabilities, would be distributed to the participants, less the costs of that distribution.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares that the sale of motor vehicles has a substantial effect on the economic well-being of the state and its citizens, and that the maintenance of integrity and fair business practices in vehicle sales and lease transactions is vitally important to the state.

(b) The Legislature further finds and declares that consumers have suffered economic loss as the result of the conduct of some motor vehicle dealers or lessor-retailers who have failed to remit amounts paid by consumers for license and registration fees, failed to pay the proceeds of consignment sales to consumer consignors, failed to discharge the obligations secured by liens on motor vehicles that are traded in in connection with the purchase of motor vehicles from the dealers or lessor-retailers, or failed to pay the amounts that the dealers or lessor-retailers agreed with consumers to pay to the lessors of motor vehicles that the consumers transferred as a trade-in to the dealers or lessor-retailers. The consumers who have been harmed often do not have adequate resources to pursue their claims against the dealers or lessor-retailers, and some of the dealers or lessor-retailers are insolvent and cannot satisfy legitimate claims. The resulting erosion

of public confidence in motor vehicle sellers has deleterious economic consequences for reputable dealers and lessor-retailers.

(c) It is the intent and purpose of this act to instill and maintain public confidence in the vehicle trade-in and consignment sale processes by establishing a recovery fund with adequate resources based on reasonable assessments for each report-of-sale to compensate and safeguard members of the public who have suffered monetary loss as the result of any of the acts described in subdivision (b) and who are unable to have those claims satisfied because of a dealership closure or insolvency.

SEC. 2. Section 4456.3 is added to the Vehicle Code, to read:

4456.3. (a) The department shall charge a dealer or lessor-retailer a fee, as established by the director pursuant to subdivision (b), for each vehicle sold by a dealer or lessor-retailer and reported on a report-of-sale form issued by the department to a dealer or lessor-retailer, or for every vehicle sold by a dealer or lessor-retailer if that licensee does not use a report-of-sale form issued by the department because the report of the sale is given electronically or otherwise. The department shall collect the fee and the fees shall be paid to the Consumer Motor Vehicle Recovery Corporation as described in Chapter 11 (commencing with Section 12200) of Division 5. The department shall not charge more than a total of two thousand five hundred dollars (\$2,500) in fees under this section to a dealer licensee within a calendar year.

(b) The director shall establish the fee at one dollar (\$1) and shall collect the fee. The director shall deposit the fees received in the Motor Vehicle Account. Notwithstanding Section 13340 of the Government Code, the revenues from the fees deposited in the Motor Vehicle Account, less an amount that the director determines is equal to the department's costs related to collecting and processing the fees, is hereby continuously appropriated to the department for quarterly payment to the Consumer Motor Vehicle Recovery Corporation until the Consumer Motor Vehicle Recovery Corporation notifies the department that the balance in the recovery fund maintained by the corporation has reached five million dollars (\$5,000,000). Within 90 days after being notified by the Consumer Motor Vehicle Recovery Corporation, the director shall cease collecting the fee. Thereafter, if the amount in the recovery fund maintained by the corporation is less than two million dollars (\$2,000,000), the Consumer Motor Vehicle Recovery Corporation

shall notify the department of the amount necessary to return the recovery fund balance to five million dollars (\$5,000,000). Within 90 days of being notified, the director shall collect the fee and pay the fee revenue required by this subdivision until the Consumer Motor Vehicle Recovery Corporation notifies the director that the recovery fund has reached five million dollars (\$5,000,000). Within 90 days of being notified, the director shall cease collecting the fee.

(c) (1) The Consumer Motor Vehicle Recovery Corporation shall reimburse the department for all reasonable expenses incurred in implementing this section.

(2) The Consumer Motor Vehicle Recovery Corporation shall reimburse the department for all reasonable startup expenses incurred by the department to comply with this section within 90 days after the department begins collecting the fees and transmitting them to the Corporation as provided in this section.

(d) This section shall become operative on July 1, 2008.

SEC. 3. Section 11604 of the Vehicle Code is amended to read:

11604. The department may refuse to issue a lessor-retailer license when it makes any of the following determinations:

(a) The applicant has outstanding an unsatisfied final court judgment rendered in connection with an activity licensed under the authority of this division.

(b) The applicant was previously the holder, or a managerial employee of the holder, of a license issued under this division which was revoked for cause and never reissued by the department, or which was suspended for cause and the terms of suspension have not been fulfilled.

(c) The applicant was previously a business representative whose license issued under this division was revoked for cause and never reissued or was suspended for cause and the terms of suspension have not been fulfilled.

(d) If the applicant is a business, a business representative was previously the holder of a license, or was a business representative of a business whose license, issued under this division, was revoked for cause and never reissued or was suspended for cause and the terms of suspension have not been fulfilled; or, by reason of the facts and circumstances related to the organization, control, and management of the business, the operation of that business will be directed, controlled, or managed by individuals who, by reason

of their conviction of violations of this code, would be ineligible for a license and, by licensing that business, the purposes of this chapter would be defeated.

(e) The applicant, or a business representative if the applicant is a business, has been convicted of a crime or committed any act or engaged in conduct involving moral turpitude which is substantially related to the qualifications, functions, or duties of the licensed activity. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(f) The applicant was previously the holder of an occupational license issued by another state, authorizing the same or similar activities of a license issued under this division; and that license was revoked or suspended for cause and was never reissued, or was suspended for cause, and the terms of suspension have not been fulfilled.

(g) The information contained in the application is incorrect.

(h) A decision of the department to cancel, suspend, or revoke a license has been made, and the applicant was a business representative of the business regulated under that license.

(i) The applicant does not have a principal place of business in California.

(j) The applicant has failed to pay the full amount of a claim paid by the Consumer Motor Vehicle Recovery Corporation, plus interest at the rate of 10 percent per annum, as described in subdivision (i) of Section 11703.

SEC. 4. Section 11703 of the Vehicle Code is amended to read:

11703. The department may refuse to issue a license to a manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer, if it determines any of the following:

(a) The applicant was previously the holder, or a managerial employee of the holder, of a license issued under this chapter which was revoked for cause and never reissued by the department, or which was suspended for cause and the terms of suspension have not been fulfilled.

(b) The applicant was previously a business representative of a business whose license issued under this chapter was revoked for cause and never reissued or was suspended for cause and the terms of suspension have not been fulfilled.

(c) If the applicant is a business, a business representative of the business was previously the holder of a license, or was a business representative of a business whose license, issued under this chapter was revoked for cause and never reissued or was suspended for cause and the terms of suspension have not been fulfilled; or, by reason of the facts and circumstances related to the organization, control, and management of the business, the operation of that business will be directed, controlled, or managed by individuals who, by reason of their conviction of violations of the provisions of this code, would be ineligible for a license and, by licensing the business, the purposes of this chapter would be defeated.

(d) The applicant, or a business representative if the applicant is a business, has been convicted of a crime or committed an act or engaged in conduct involving moral turpitude which is substantially related to the qualifications, functions, or duties of the licensed activity. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(e) The applicant was previously the holder of an occupational license issued by another state, authorizing the same or similar activities of a license issued under this division; and that license was revoked or suspended for cause and was never reissued, or was suspended for cause, and the terms of suspension have not been fulfilled.

(f) The information contained in the application is incorrect.

(g) Upon investigation, the business history required by Section 11704 contains incomplete or incorrect information, or reflects substantial business irregularities.

(h) A decision of the department to cancel, suspend, or revoke a license has been made and the applicant was a business representative of the business regulated under that license.

(i) The applicant has failed to repay the full amount of a claim paid by the Consumer Motor Vehicle Recovery Corporation, plus interest at the rate of 10 percent per annum. The dealer or lessor-retailer's discharge in bankruptcy shall not relieve the dealer or lessor-retailer from the provisions of this subdivision, except to the extent, if any, mandated by bankruptcy law.

SEC. 5. Section 11705 of the Vehicle Code is amended to read:

11705. (a) The department, after notice and hearing, may suspend or revoke the license issued to a dealer, transporter,

manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, or distributor branch upon determining that the person to whom the license was issued is not lawfully entitled thereto, or has done any of the following:

(1) Filed an application for the license using a false or fictitious name not registered with the proper authorities, or knowingly made a false statement or knowingly concealed a material fact, in the application for the license.

(2) Made, or knowingly or negligently permitted, an illegal use of the special plates issued to the licensee.

(3) Used a false or fictitious name, knowingly made a false statement, or knowingly concealed a material fact, in an application for the registration of a vehicle, or otherwise committed a fraud in the application.

(4) Failed to deliver to a transferee lawfully entitled thereto a properly endorsed certificate of ownership.

(5) Knowingly purchased, sold, or otherwise acquired or disposed of a stolen motor vehicle.

(6) Failed to provide and maintain a clear physical division between the type of business licensed pursuant to this chapter and any other type of business conducted at the established place of business.

(7) Willfully violated Section 3064 or 3065 or any rule or regulation adopted pursuant thereto.

(8) Violated any provision of Division 3 (commencing with Section 4000) or any rule or regulation adopted pursuant thereto, or subdivision (a) of Section 38200.

(9) Violated any provision of Division 4 (commencing with Section 10500) or any rule or regulation adopted pursuant thereto.

(10) Violated any provision of Article 1 (commencing with Section 11700) of Chapter 4 of Division 5 or any rule or regulation adopted pursuant thereto.

(11) Violated any provision of Part 5 (commencing with Section 10701) of Division 2 of the Revenue and Taxation Code or any rule or regulation adopted pursuant thereto.

(12) Violated any provision of Chapter 2b (commencing with Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code or any rule or regulation adopted pursuant thereto.

(13) Submitted a check, draft, or money order to the department for any obligation or fee due the state which was dishonored or refused payment upon presentation.

(14) Has caused any person to suffer any loss or damage by reason of any fraud or deceit practiced on that person or fraudulent representations made to that person in the course of the licensed activity.

For purposes of this paragraph, “fraud” includes any act or omission which is included within the definition of either “actual fraud” or “constructive fraud” as defined in Sections 1572 and 1573 of the Civil Code, and “deceit” has the same meaning as defined in Section 1710 of the Civil Code. In addition, “fraud” and “deceit” include, but are not limited to, a misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact; a promise or representation not made honestly and in good faith; an intentional failure to disclose a material fact; and any act within Section 484 of the Penal Code.

For purposes of this paragraph, “person” also includes a governmental entity.

(15) Failed to meet the terms and conditions of an agreement entered into pursuant to Section 11707.

(16) Violated Section 43151, 43152, or 43153 of, or subdivision (b) of Section 44072.10 of, the Health and Safety Code.

(17) Failed to repay a claim paid by the Consumer Motor Vehicle Recovery Corporation as provided in subdivision (i) of Section 11703.

(b) Any of the causes specified in this chapter as a cause for refusal to issue a license to a transporter, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, or dealer applicant is cause to suspend or revoke a license issued to a transporter, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, or dealer.

(c) Except as provided in Section 11707, every hearing provided for in this section shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 6. Chapter 11 (commencing with Section 12200) is added to Division 5 of the Vehicle Code, to read:

CHAPTER 11. CONSUMER RECOVERY FUND

12200. The following definitions apply to this chapter:

(a) “Application” means an application to the recovery corporation for the payment of an eligible claim from the recovery fund that is filed with the recovery corporation after January 1, 2009.

(b) “Consumer” means a person who either (1) purchased or leased, or became obligated to purchase or lease, a motor vehicle to be used primarily for personal, family, or household purposes from a dealer or lessor-retailer licensed under this code, or (2) consigned for sale a motor vehicle that was used primarily for personal, family, or household purposes to a dealer licensed under this code.

(c) “Eligible claim” means an unsatisfied claim for economic loss, not barred by the statutes of limitation, that accrues after July 1, 2008, as a result of the failure of a dealer licensed under this code, or if applicable, a lessor-retailer licensed under this code, to do any of the following:

(1) Remit license or registration fees received or contractually obligated to be paid from a consumer to the department.

(2) Pay to the legal owner of a vehicle transferred as a trade-in by a consumer to the dealer or lessor-retailer the amount necessary to discharge the prior credit balance owed to the legal owner.

(3) Pay to the lessor registered in accordance with Section 4453.5 of a vehicle transferred as a trade-in by a consumer to the dealer or lessor-retailer the amount the dealer or lessor-retailer agreed to pay to the lessor.

(4) Pay the amount specified in a consignment agreement to a consumer after the sale of a consigned vehicle.

(d) “Participant” means a dealer licensed under this code or a lessor-retailer licensed under this code.

(e) “Recovery corporation” means the Consumer Motor Vehicle Recovery Corporation.

(f) “Recovery fund” means the consumer recovery fund established by the recovery corporation pursuant to Section 12203 for the payment of eligible claims.

12201. (a) Participants shall maintain a corporation under the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations

Code) that shall operate under the name “Consumer Motor Vehicle Recovery Corporation.”

(b) The purpose of the Consumer Motor Vehicle Recovery Corporation is to provide payments to consumers on eligible claims subject to the requirements and limitations set forth in this chapter.

(c) A participant may not charge or collect from a consumer a separate fee or charge to recoup the fee paid by the participant pursuant to Section 4456.3.

(d) The State of California and its officers, agents, or employees shall not be liable for any act or omission of the recovery corporation or its directors, officers, agents, or employees.

12202. (a) The recovery corporation shall have a board of directors composed of six directors, as follows:

(1) One public consumer representative member appointed by the Director of Consumer Affairs who shall serve until the appointment is revoked, another appointment is made, or until the appointed director resigns. The consumer representative shall be either of the following:

(A) A current or former prosecutor with at least two years of direct experience in the civil or criminal enforcement of consumer protection laws, including laws prohibiting deceptive advertising and unlawful and fraudulent practices.

(B) A current or former employee of a government agency who has at least two years of direct experience in one of the following:

(i) The investigation, mediation, and resolution of consumer complaints.

(ii) Providing counseling, information, education, or referral services to consumers.

(iii) Administering a consumer protection program that provides any of the services described in clause (i) or (ii).

(2) A representative of the Attorney General, who shall serve as an ex officio, nonvoting member.

(3) One member of the general public appointed by the Senate Committee on Rules to a two-year term.

(4) One member of the general public appointed by the Speaker of the Assembly to a two-year term, except that the initial appointment to the board of directors shall be for a one-year term.

(5) Two participants, who shall be appointed by the Governor for two-year terms, except that the initial term of the position of one of the participant directors shall be for a one-year term.

(b) A person is eligible to be nominated and to serve as a participant director if the person satisfies all of the following conditions:

(1) The person's primary occupation, at the time of nomination and continuously during the previous three years, has been as an owner or general manager of a licensed dealer or lessor-retailer.

(2) The person has not been convicted of a crime, including a plea or verdict of guilty or a conviction following a plea of nolo contendere.

(3) The person is not subject to a judgment or administrative order, whether entered after adjudication or stipulation, predicated on that person's commission of an act of dishonesty, fraud, deceit, or violation of this chapter or Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code.

(4) The person is not a defendant in a pending criminal or civil law enforcement action brought by a public prosecutor.

(5) The person has not served as a participant director of the recovery corporation at any time during the previous 18 months.

(c) A director who does not qualify to be a participant director, whose term has lapsed, or who otherwise becomes unable to serve shall not continue to serve as a director.

12203. (a) The recovery corporation shall establish a consumer recovery fund for the payment of claims as provided in this chapter. The recovery corporation shall receive funds from the department as provided in Section 4456.3 and shall promptly notify the department when the recovery fund balance reaches the amounts specified in subdivision (b) of Section 4456.3.

(b) The recovery corporation shall establish and maintain an operations account within the recovery fund for the payment of costs of operations and administration. The recovery corporation shall prepare, prior to its fiscal year end, an estimated annual operational budget projecting the costs of operations and administration for the succeeding fiscal year, excluding the amount paid for claims. The recovery corporation shall not expend more than two hundred fifty thousand dollars (\$250,000) each fiscal year from the operations account for the administration of this chapter.

(c) The recovery corporation shall invest all funds received from the department pursuant to Section 4456.3, and interest earned on

those funds, deposited in the recovery fund, in a federally insured account or in federally insured certificates of deposit at a California state or federally chartered bank or savings bank.

(d) The recovery corporation holds all money in the recovery fund in trust for the purposes provided in this chapter and shall disburse funds only as provided in this chapter.

(e) The recovery corporation shall separately account for disbursements and collections. The accounting shall include a record of each claim paid that indicates the name, address, and phone number of each claimant receiving payment, the amount of the payment, and the name of the participant for which a claim was paid. Quarterly reports shall be provided to the office of the Attorney General, Consumer Law Section, commencing on or before October 31, 2008, and within 30 days after the end of each quarter thereafter.

(f) The recovery corporation may adopt reasonable written bylaws, rules, and procedures to carry out the purposes of this chapter. The representative of the Attorney General may vote on the adoption of bylaws, rules, and procedures notwithstanding paragraph (2) of subdivision (a) of Section 12202.

12204. (a) A consumer may file an application with the recovery corporation for the payment of the consumer's eligible claim if a dealer or lessor-retailer against whom the claim is asserted has ceased selling and leasing motor vehicles to the general public or has become subject to a petition in bankruptcy.

(b) (1) The application shall be verified and shall set forth all of the following information:

(A) The consumer's name, address, and telephone number.

(B) The amount of the eligible claim.

(C) A description of the circumstances demonstrating an eligible claim.

(D) A statement indicating the consumer's belief that the dealer or lessor-retailer has ceased selling and leasing motor vehicles to the general public or has become subject to a petition in bankruptcy and the reasons for this belief.

(E) A statement indicating what action, if any, the applicant has taken to recover the amount of the eligible claim.

(F) A statement indicating that the consumer's application for payment does not include any amount for which the consumer has

obtained recovery under the dealer's bond required by Section 11710.

(2) Nothing in this chapter shall be construed to require a consumer to bring a civil action to obtain recovery, file a bankruptcy claim, or file a crime report with a law enforcement agency in order to obtain payment of an eligible claim submitted to the recovery corporation.

(c) The application shall be accompanied by a copy of the agreement between the consumer and the dealer or lessor-retailer, unless the agreement is unnecessary to the recovery corporation's determination of the validity of the claim.

(d) If the eligible claim is based on the failure to remit license or registration fees, the application shall be accompanied by evidence demonstrating that the consumer paid money or other consideration for the fees, or became obligated to pay the fees, and that the fees had not been remitted. The eligible claim shall be limited to the dollar amount of the license or registration fees not remitted and a late charge or penalty.

(e) If the eligible claim is based on the failure to pay the proceeds of a consignment sale, the application shall be accompanied by the consignment agreement, evidence that the consigned vehicle was sold, and by the consumer's verified statement that the consumer did not receive the portion of the proceeds of the sale to which the consumer was entitled. The eligible claim is limited to the dollar amount specified in a written consignment agreement to be paid to the consignor.

(f) If the eligible claim is based on the failure to pay the legal owner of the consumer's trade-in vehicle, the application shall be accompanied by a statement from the legal owner of the amount, if any, that he or she received from the dealer or lessor-retailer. The eligible claim is limited to the dollar amount necessary to discharge the credit balance owing on the trade-in vehicle.

(g) If the eligible claim is based on the failure to pay the lessor of the consumer's trade-in vehicle, the application shall be accompanied by a statement from the lessor of the amount, if any, that the lessor received from the dealer or lessor-retailer. The eligible claim is limited to the dollar amount necessary to pay the lessor the total amount that the dealer or lessor-retailer agreed with the consumer to pay the lessor.

(h) The recovery corporation may require reasonable additional information designed to facilitate payment of eligible claims.

(i) (1) For claims that have accrued on or after July 1, 2008, and before January 1, 2009, the application shall be filed within 18 months of the date upon which the dealer or lessor-retailer ceased selling or leasing motor vehicles to the general public or became subject to a petition in bankruptcy.

(2) For claims that have accrued on or after January 1, 2009, the application shall be filed within one year of the date upon which the dealer or lessor-retailer ceased selling or leasing motor vehicles to the general public or became subject to a petition in bankruptcy.

12205. The recovery corporation shall develop a notice fully explaining a consumer's right to make a claim from the fund, an application form, and an explanation of how to complete the application. The notice, application, and explanation shall be in English and Spanish and shall be provided to a person upon request.

12206. (a) Within 30 days of receiving an application, the recovery corporation shall notify the applicant, in writing, that the application is complete or, if the application is incomplete, what additional information is required.

(b) (1) Within 60 days of the recovery corporation providing notice to the applicant of a complete application, the recovery corporation shall either pay the eligible claim from the fund as prescribed in this chapter or deny the claim. A claim shall be deemed granted unless the directors affirmatively vote to deny the claim.

(2) The recovery corporation, for good cause, may extend the 60-day period not more than an additional 90 days to investigate the accuracy of the application or evidence submitted by a dealer or lessor-retailer.

(c) A director shall not be involved in the decision of a claim if the director has a financial interest in the outcome of the decision; has a financial interest in or is employed by the participant that is the subject of the claim; or has a familial or close personal relationship with the claimant or an owner, officer, director, or manager of the participant.

12207. (a) Within 15 days of receiving a complete application, the recovery corporation shall serve a copy of the complete application and the following notice on the dealer or lessor-retailer that is the subject of the claim:

“NOTICE”

“The attached application has been made to the Consumer Motor Vehicle Recovery Corporation for payment of a claim allegedly arising out of your conduct or omission. If you wish to contest payment, you must file a written response to the application that describes any evidence that you have showing that the application is inaccurate or that payment from the fund is not authorized under Section 12200 and following of the Vehicle Code, a copy of which is provided.

“The allegations stated in the attached application may constitute grounds on which disciplinary action may be taken to suspend or revoke your license. In addition, the Department of Motor Vehicles may suspend your license until you have repaid in full the amount paid by the Consumer Motor Vehicle Recovery Corporation on the attached application, plus interest at the rate of 10 percent per annum.”

(b) The notice prescribed by subdivision (a), a copy of the application for payment, and a copy of this chapter shall be served on the dealer or lessor-retailer by personal service or certified mail, return receipt requested, at the department’s mailing address of record for that licensee.

12208. If the recovery corporation pays the claim, the amount of the payment shall be the total of the amount of the eligible claim, but in no event may the payment exceed thirty-five thousand dollars (\$35,000) for a transaction.

12209. If the recovery corporation denies the claim, the recovery corporation shall notify the applicant in writing of the denial, the legal and factual bases for the denial, and the applicant’s right to contest the denial in writing within 60 days or any longer period permitted by the recovery corporation. If the applicant does not contest the denial within 60 days or an additional period reasonably requested by the consumer, the decision shall be final. The recovery corporation shall act on the applicant’s objection within 30 days. If the claim is denied in whole or in part, the applicant may seek review in the superior court of any of the following counties in which the office of the Attorney General maintains an office: Sacramento, San Francisco, Los Angeles, or

San Diego. Review shall be limited to the written record before the recovery corporation and any relevant evidence that could not have been previously presented to the recovery corporation despite the applicant's reasonable diligence. The superior court shall affirm the decision of the recovery corporation if it is supported by substantial evidence.

12210. After the recovery corporation pays or rejects a claim, all of the following apply:

(a) Immediately upon payment, the recovery corporation shall be subrogated to all of the consumer's rights against the dealer or lessor-retailer to the extent of the amount of the payment.

(b) The recovery corporation may bring an action to recover the amount of the payment plus interest at the rate of 10 percent per annum and shall be entitled to recover costs and reasonable attorney's fees.

(c) Within 10 days of paying the claim, the recovery corporation shall inform the department of the payment of the claim, the amount of the payment, and the name and address of the dealer or lessor-retailer that is the subject of the claim. Upon the department's request, the recovery corporation shall provide the department with a copy of the claim application and other documents received by the recovery corporation in connection with the claim.

(d) Within 15 days of paying or rejecting the claim, the recovery corporation shall serve the dealer or lessor-retailer that is the subject of the claim with notice of the recovery corporation's disposition of the claim in the manner provided for service in subdivision (b) of Section 12207.

(e) After the consumer receives payment of the eligible claim from the recovery corporation, the consumer shall not seek to recover the amount received from the recovery corporation for the eligible claim from the dealer's bond required by Section 11710. Nothing in this subdivision affects any other rights the consumer may have as provided in Section 12217.

12211. If the recovery corporation has insufficient funds to pay all eligible claims, the recovery corporation shall pay eligible claims in the order that the claim applications were received and shall hold the remaining claims until funds are available to pay those claims.

12212. (a) Within 30 days after the close of the fiscal year or other reasonable period established by the board of directors, the recovery corporation shall make publicly available a statement of the following information concerning the most recently concluded fiscal year:

- (1) The number of claims and approximate dollar amount of the claims received.
- (2) The total number of claims and total dollar amount of claims paid.
- (3) The approximate number and dollar amount of claims denied or abandoned.
- (4) The dollar balance in the recovery fund.
- (5) The dollar amount of fees received pursuant to Section 4456.3.
- (6) The administrative costs and expenses of the recovery corporation.

(b) The recovery corporation shall make publicly available within 15 days of approval by the board of directors or other reasonable period established by the board of directors, the following information:

- (1) The approved minutes of meetings of the board of directors.
- (2) The approved estimated annual operational budget projecting the costs of operations and administration for the succeeding fiscal year, excluding the amount to be paid for claims.
- (3) The approved bylaws, as amended, of the recovery corporation.

(c) Information may be made publicly available as required by this section by disseminating the information on an Internet Web site or providing the information by electronic mail to a person who has requested the information and provided a valid electronic mail address.

12213. The operation of the recovery corporation shall at all times be subject to the examination and review of the Attorney General and the Attorney General's representatives. The Attorney General and his or her representatives may at any time investigate the affairs and examine the books, accounts, records, and files used by the recovery corporation. The Attorney General and his or her representatives shall have free access to the offices, books, accounts, papers, records, files, safes, and vaults of the recovery

corporation and may copy any documents of, or in the possession of, the recovery corporation.

12214. The Attorney General or his or her representative may determine that the recovery corporation has failed or ceased to operate upon a finding that any one of the following has occurred with respect to the recovery corporation:

- (a) The recovery corporation was not created.
- (b) The recovery corporation is dissolved.
- (c) The recovery corporation ceased to operate.
- (d) The recovery corporation is insolvent or bankrupt.
- (e) The recovery corporation failed to pay its operating costs.
- (f) The recovery corporation failed to pay any claim or judgment in a timely manner.
- (g) The recovery corporation violated its articles of incorporation or any law of this state.
- (h) The recovery corporation invested its funds in violation of this chapter.
- (i) The recovery corporation has not diligently made a decision upon a claim made by a person aggrieved.
- (j) The recovery corporation violated any section of this chapter.
- (k) The recovery corporation neglected or refused to submit its books, papers, and affairs to the inspection of the Attorney General or his or her representatives.

12215. If the recovery corporation is dissolved or ceases to exist, or if the Attorney General or his or her representative makes a determination, pursuant to Section 12214, that the recovery corporation has failed or ceased to operate, all outstanding debts, obligations of the recovery corporation, and amounts due for services rendered shall first be paid from the remaining assets, including the recovery fund. The assets remaining, after settling those liabilities, shall be distributed to the participants, less the costs of that distribution.

12216. All costs and expenses incurred by the Department of Justice in the administration of this chapter shall be paid to the Department of Justice by the recovery corporation. The Department of Justice may institute an action for the recovery of costs and expenses incurred in the administration of this article in any court of competent jurisdiction.

12217. Nothing in this chapter is intended to limit or restrict actions, remedies, penalties, or procedures otherwise available pursuant to any other provision of law.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2007

Governor